

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Justin and Melissa Werth, *et al.*,

Plaintiffs,

v.

Civ. No. 10-2235 (RHK/FLN)
**SCHEDULING ORDER AND
ORDER FOR SUBMISSION
OF TRIAL MATERIALS**

Hill-Rom, Inc.,

Defendant.

In accordance with the status conference held on this date with counsel, **IT IS ORDERED** as follows:

1. Defendant shall serve and file a new memorandum in support of its Motion to Exclude Expert Testimony (Doc. No. 74), along with all supporting documents, on or before February 27, 2012;

2. Plaintiffs shall jointly serve and file one memorandum in response to Defendant's Motion to Exclude Expert Testimony, along with all supporting documents, on or before March 12, 2012. Plaintiffs' memorandum shall not exceed 12,000 words;

3. Defendant shall serve and file a reply memorandum in support of its Motion to Exclude Expert Testimony, if any, along with all supporting documents, on or before March 19, 2012. The combined length of Defendant's opening memorandum and reply memorandum shall not exceed 12,000 words;

4. On or before March 12, 2012, Defendant shall serve and file one memorandum (not to exceed 12,000 words), along with all supporting documents, in

response to (1) the Werths' Daubert Motion to Exclude Testimony by Hill-Rom's Expert Yadin David (Doc. No. 95) and (2) Allina's Daubert Motion to Exclude Expert Witness Testimony of Dr. James Dobbs (Doc. No. 99);

5. On or before March 19, 2012, Plaintiffs shall jointly serve and file one reply memorandum, if any, in support of their Daubert Motions, along with all supporting documents. This memorandum shall not exceed 3,497 words;¹

6. A hearing on all of the foregoing Motions (Doc. Nos. 74, 95, 99) will be held before the undersigned at 8:00 a.m. on Thursday, March 29, 2012, in Courtroom 7A, Warren E. Burger Federal Building and United States Courthouse, 316 N. Robert Street, St. Paul, Minnesota. The hearing will *not* be an evidentiary hearing, but rather will be oral argument in support of, and in opposition to, the Motions;²

7. The parties will be required to participate in a settlement conference before Magistrate Judge Noel shortly after the foregoing Motions have been decided. The parties will be notified by separate Order of the date and time of the settlement conference;

8. In the event the settlement conference proves unsuccessful, a hearing will be held on Defendant's Motion for Summary Judgment (Doc. No. 70) on Friday, June 15, 2012, in Courtroom 7A, Warren E. Burger Federal Building and United States

¹ The openings briefs on Plaintiffs' Daubert Motions contained 8,503 words (2,920 words by the Werths and 5,583 words by Allina). Accordingly, 3,497 words remain for a reply.

² Although the Court and counsel had discussed holding a hearing on March 30, 2012, a scheduling conflict requires that the hearing be held on March 29.

Courthouse, 316 N. Robert Street, St. Paul, Minnesota. The following schedule shall apply to the Motion:

- a) Defendant shall serve and file a new memorandum in support of its Motion, along with all supporting documents, on or before May 4, 2012;
- b) Plaintiffs shall serve and file their memoranda in response to the Motion, along with all supporting documents, on or before May 25, 2012. Although Plaintiffs will not be required to file a joint memorandum, the combined length of their memoranda shall not exceed 16,000 words (to be divided between the Werths and Allina as they see fit); and
- c) Defendant shall serve and file a reply memorandum in support of its Motion, if any, along with all supporting documents, on or before June 1, 2012. The combined length of Defendant's opening memorandum and reply memorandum shall not exceed 12,000 words; and

9. If this matter is not disposed of via summary judgment (or settlement), **JURY SELECTION** will commence on Wednesday, July 25, 2012, at 9:00 a.m. in Courtroom 7A, Warren E. Burger Federal Building and United States Courthouse, 316 N. Robert Street, St. Paul, Minnesota. A **JURY TRIAL** will follow immediately thereafter and continue from day to day until completed. If the matter proceeds to trial, the

following materials are to be **EXCHANGED AND FILED** in accordance with the deadlines below:

- a) On or before July 11, 2012: (i) all “documents to be submitted for trial” as required by Local Rule 39.1(b); (ii) designation of copies of proposed deposition testimony; (iii) Motions in Limine with supporting briefs; and (iv) Trial Brief with a statement of the issues (substantive and evidentiary), facts expected to be proved at trial, and controlling statutory and case law;
- b) On or before July 17, 2012: (i) responsive briefs to Motions in Limine; (ii) written objections, and the grounds therefor, to opposing parties’ exhibits and designated deposition testimony (copies of objected-to exhibits and objected-to deposition testimony shall be furnished simultaneously to the Court); and (iii) replies to Trial Briefs; and
- c) On or before July 20, 2012: responses to written objections.

Dated: February 17, 2012

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge